



सीमाशुल्क (अपील) आयुक्तका कार्यालय, अहमदाबाद
 OFFICE OF THE COMMISSIONER OF CUSTOMS (APPEALS), AHMEDABAD
 चौथी मंजिल 4th Floor, हडको बिल्डिंग HUDCO Building, ईश्वर भुवन रोड Ishwar Bhuvan Road,
 नवरंगपुरा Navrangpura, अहमदाबाद Ahmedabad - 380 009.
 दूरभाष क्रमांक Tel. No. 079-26589281

DIN-20251071MN0000722997

क	फाइल संख्या FILE NO.	F.No. S/49-374/CUS/AHD/2023-24
ख	अपीलआदेश संख्या ORDER-IN-APPEAL No. (सीमाशुल्क अधिनियम, 1962 की धारा 128क के अंतर्गत) (UNDER SECTION 128A OF THE CUSTOMS ACT, 1962):	AHD-CUSTM-000-APP-291-25-26
ग	पारितकर्ता PASSED BY	SHRI AMIT GUPTA Commissioner of Customs (Appeals), AHMEDABAD
घ	दिनांक DATE	27.10.2025
ङ	उद्भूत अपील आदेश की सं. व दिनांक ARISING OUT OF ORDER - IN - ORIGINAL NO.	O.I.O. No. 153/ADC/VM/O&A/2023-24 dated 05.10.2023 passed by the Additional Commissioner of Customs, Ahmedabad.
	अपील आदेश जारी करने की दिनांक ORDER- IN-APPEAL ISSUED ON:	27.10.2025
छ	अपीलकर्ता का नाम व पता NAME AND ADDRESS OF THE APPELLANT:	M/s. Graziano Transmissioni India Pvt. Ltd. Plot No. 14, Udyog Kendra, Greater Noida, Uttar Pradesh - 201304. (email: ajay.pandey@dana.com)
1.	यह प्रति उस व्यक्ति के निजी उपयोग के लिए मुफ्त में दी जाती है जिनके नाम यह जारी किया गया है. This copy is granted free of cost for the private use of the person to whom it is issued.	
2.	सीमाशुल्क अधिनियम 1962 की धारा 129 डी डी (1) (यथा संशोधित) के अधीन निम्नलिखित श्रेणियों के मामलों के सम्बन्ध में कोई व्यक्ति इस आदेश से अपने को आहत महसूस करता हो तो इस आदेश की प्राप्ति की तारीख से 3 महीने के अंदर अपर सचिव/संयुक्त सचिव (आवेदन संशोधन), वित्त मंत्रालय, (राजस्व विभाग) संसद मार्ग, नई दिल्ली को पुनरीक्षण आवेदन प्रस्तुत कर सकते हैं।	



	Under Section 129 DD(1) of the Customs Act, 1962 (as amended), in respect of the following categories of cases, any person aggrieved by this order can prefer a Revision Application to The Additional Secretary/Joint Secretary (Revision Application), Ministry of Finance, (Department of Revenue) Parliament Street, New Delhi within 3 months from the date of communication of the order.
	निम्नलिखित सम्बन्धित आदेश/Order relating to :
(क)	बैगेज के रूप में आयातित कोई माल.
(a)	any goods imported on baggage.
(ख)	भारत में आयात करने हेतु किसी वाहन में लादा गया लेकिन भारत में उनके गन्तव्य स्थान पर उतारे न गए माल या उस गन्तव्य स्थान पर उतारे जाने के लिए अपेक्षित माल उतारे न जाने पर या उस गन्तव्य स्थान पर उतारे गए माल की मात्रा में अपेक्षित माल से कमी हो.
(b)	any goods loaded in a conveyance for importation into India, but which are not unloaded at their place of destination in India or so much of the quantity of such goods as has not been unloaded at any such destination if goods unloaded at such destination are short of the quantity required to be unloaded at that destination.
(ग)	सीमाशुल्क अधिनियम, 1962 के अध्याय X तथा उसके अधीन बनाए गए नियमों के तहत शुल्क वापसी की अदायगी.
(c)	Payment of drawback as provided in Chapter X of Customs Act, 1962 and the rules made thereunder.
3.	पुनरीक्षण आवेदन पत्र संगत नियमावली में विनिर्दिष्ट प्रारूप में प्रस्तुत करना होगा जिसके अन्तर्गत उसकी जांच की जाएगी और उस के साथ निम्नलिखित कागजात संलग्न होने चाहिए :
	The revision application should be in such form and shall be verified in such manner as may be specified in the relevant rules and should be accompanied by :
(क)	कोर्ट फी एक्ट, 1870 के मद सं.6 अनुसूची 1 के अधीन निर्धारित किए गए अनुसार इस आदेश की 4 प्रतियां, जिसकी एक प्रति में पचास पैसे की न्यायालय शुल्क टिकट लगा होना चाहिए.
(a)	4 copies of this order, bearing Court Fee Stamp of paise fifty only in one copy as prescribed under Schedule 1 item 6 of the Court Fee Act, 1870.
(ख)	सम्बद्ध दस्तावेजों के अलावा साथ मूल आदेश की 4 प्रतियां, यदि हो
(b)	4 copies of the Order - In - Original, in addition to relevant documents, if any
(ग)	पुनरीक्षण के लिए आवेदन की 4 प्रतियां
(c)	4 copies of the Application for Revision.
(घ)	पुनरीक्षण आवेदन दायर करने के लिए सीमाशुल्क अधिनियम, 1962 (यथासंशोधित) में निर्धारित फीस जो अन्य रसीद, फीस, दण्ड, जब्ती और विविध मदों के शीर्षके अधीन आता है में रु. 200/- (रूपए दो सौ मात्र) या रु. 1000/- (रूपए एक हजार मात्र), जैसा भी मामला हो, से सम्बन्धित भुगतान के प्रमाणिक चलान टी.आर.6 की दोप्रतियां। यदि शुल्क, मांगा गया व्याज, लगाया गया दंड की राशि और रूपए एक लाख या उससे कम हो तो ऐसे फीस के रूप में रु. 200/- और यदि एक लाख से अधिक हो तो फीस के रूप में रु. 1000/-
(d)	The duplicate copy of the T.R.6 challan evidencing payment of Rs. 200/- (Rupees two Hundred only) or Rs. 1,000/- (Rupees one thousand only) as the case may be, under the Head of other receipts, fees, fines, forfeitures and Miscellaneous Items being the fee prescribed in the Customs Act, 1962 (as amended) for filing a Revision Application. If the amount of duty and interest demanded, fine or penalty levied is one lakh rupees or less, fees as Rs. 200/- and if it is more than one lakh rupees, the fee is Rs. 1000/-.
4.	मद सं. 2 के अधीन सूचित मामलों के अलावा अन्य मामलों के सम्बन्ध में यदि कोई व्यक्ति इस आदेश से आहत महसूस करता हो तो वे सीमाशुल्क अधिनियम 1962 की धारा 129 ए (1) के अधीन फॉर्म सी.ए.-3 में सीमाशुल्क, केन्द्रीय उत्पाद शुल्क और सेवा कर अपील अधिकरण के समक्ष निम्नलिखित पते पर अपील कर सकते हैं



	In respect of cases other than these mentioned under item 2 above, any person aggrieved by this order can file an appeal under Section 129 A(1) of the Customs Act, 1962 in form C.A.-3 before the Customs, Excise and Service Tax Appellate Tribunal at the following address :	
	सीमाशुल्क, केंद्रीय उत्पाद शुल्क व सेवा कर अपीलियअधिकरण, पश्चिमी क्षेत्रीय पीठ	Customs, Excise & Service Tax Appellate Tribunal, West Zonal Bench
	दूसरी मंजिल, बहुमाली भवन, निकट गिरधरनगर पुल, असारवा, अहमदाबाद-380016	2 nd Floor, Bahumali Bhavan, Nr. Girdhar Nagar Bridge, Asarwa, Ahmedabad-380 016
5.	सीमाशुल्क अधिनियम, 1962 की धारा 129 ए (6) के अधीन, सीमाशुल्क अधिनियम, 1962 की धारा 129 ए (1) के अधीन अपील के साथ निम्नलिखित शुल्क संलग्न होने चाहिए-	
	Under Section 129 A (6) of the Customs Act, 1962 an appeal under Section 129 A (1) of the Customs Act, 1962 shall be accompanied by a fee of -	
(क)	अपील से सम्बन्धित मामले में जहां किसी सीमाशुल्क अधिकारी द्वारा मांगा गया शुल्क और व्याज तथा लगाया गया दंड की रकम पाँच लाख रूपए या उससे कम हो तो एक हजार रुपए.	
(a)	where the amount of duty and interest demanded and penalty levied by any officer of Customs in the case to which the appeal relates is five lakh rupees or less, one thousand rupees;	
(ख)	अपील से सम्बन्धित मामले में जहां किसी सीमाशुल्क अधिकारी द्वारा मांगा गया शुल्क और व्याज तथा लगाया गया दंड की रकम पाँच लाख रूपए से अधिक हो लेकिन रुपये पचास लाख से अधिक न हो तो; पाँच हजार रुपए	
(b)	where the amount of duty and interest demanded and penalty levied by any officer of Customs in the case to which the appeal relates is more than five lakh rupees but not exceeding fifty lakh rupees, five thousand rupees ;	
(ग)	अपील से सम्बन्धित मामले में जहां किसी सीमाशुल्क अधिकारी द्वारा मांगा गया शुल्क और व्याज तथा लगाया गया दंड की रकम पचास लाख रूपए से अधिक हो तो; दस हजार रुपए.	
(c)	where the amount of duty and interest demanded and penalty levied by any officer of Customs in the case to which the appeal relates is more than fifty lakh rupees, ten thousand rupees	
(घ)	इस आदेश के विरुद्ध अधिकरण के सामने, मांगे गए शुल्क के 10 % अदा करने पर, जहां शुल्क या शुल्क एवं दंड विवाद में हैं, या दंड के 10 % अदा करने पर, जहां केवल दंड विवाद में हैं, अपील रखा जाएगा।	
(d)	An appeal against this order shall lie before the Tribunal on payment of 10% of the duty demanded where duty or duty and penalty are in dispute, or penalty, where penalty alone is in dispute.	
6.	उक्त अधिनियम की धारा 129 (ए) के अन्तर्गत अपील प्राधिकरण के समक्ष दायर प्रत्येक आवेदन पत्र- (क) रोक आदेश के लिए या गलतियों को सुधारने के लिए या किसी अन्य प्रयोजन के लिए किए गए अपील : - अथवा (ख) अपील या आवेदन पत्र का प्रत्यावर्तन के लिए दायर आवेदन के साथ रुपये पाँच सौ का शुल्क भी संलग्न होने चाहिए.	
	Under section 129 (a) of the said Act, every application made before the Appellate Tribunal- (a) in an appeal for grant of stay or for rectification of mistake or for any other purpose; or (b) for restoration of an appeal or an application shall be accompanied by a fee of five Hundred rupees.	



ORDER-IN-APPEAL

M/s. Graziano Transmissioni India Pvt. Ltd., Plot No. 14, Udyog Kendra, Greater Noida, Uttar Pradesh – 201304 (hereinafter referred to as ‘the appellant’) has filed the present appeal against the Order-In-Original No. 153/ADC/VM/O&A/2023-24 dated 05.10.2023 (hereinafter referred to as ‘the impugned order’) passed by the Additional Commissioner of Customs, Ahmedabad (hereinafter referred to as ‘the adjudicating authority’).

2. Facts of the case, in brief, are that the appellant had imported various parts for use in automobile industry. The appellant had paid Customs duty by debit through MEIS scrips (Merchandise Exports from India Scheme). It is the stand of the appellant that while debiting Basic Customs duty, the Cesses viz. Education Cess and Secondary & Higher Education Cess ('S&HE Cess' for short), had also been automatically debited from scrips. Whereas, the payment of the said Cesses was not eligible as debit through MEIS scrip.

3. The Customs Premises Based Audit (PBA) of records of the appellant for the FY 2017-18, 2018-19 and 2019-20 was conducted during the period of 01.03.2021 to 05.03.2021 by officers of Customs Audit Commissionerate, New Delhi. During the said Audit, it was observed that the appellant had wrongly availed benefit of Sr. No. 530A of Notification No. 50/2017-Cus dated 30.06.2017, as amended by Notification No. 06/2018-Cus dated 02.02.2018. As per Notification No. 24/2015-Cus dated 08.04.2015 (as amended) in respect of the MEIS Scheme, the duty credit scrip can be used for payment of Basic Customs Duty and Additional Customs Duty; however, the MEIS scrip cannot be used for payment of Education Cess, S&HE Cess (leviable prior to 02.02.2018) and Social Welfare Surcharge (leviable w.e.f. 02.02.2018). Consequently, a Show Cause Notice F.No. VIII/10-68/Graziano/ O&A/HQ/2021-22 dated 30.12.2022 was issued to the appellant proposing to demand Education Cess and S&HE Cess totally amounting to **Rs.6,192/-** with interest and penalties as well as for holding the imported goods liable for confiscation.

4. The aforesaid Show Cause Notice has been adjudicated vide the impugned order. The adjudicating authority has confirmed the entire demand of Education Cess and S&HE Cess with interest under the provisions of Section 28(4) and Section 28AA of the Customs Act, 1962. He ordered to confiscate the imported goods valued at Rs.25,45,030/- and gave an option to pay fine of Rs.50,000/- in lieu of confiscation. He also imposed a penalty of Rs.6,192/- under Section 114A and a penalty of Rs.10,000/- under Section 114AA ibid on the appellant.



5. Being aggrieved against the impugned order, M/s. Graziano Transmissioni India Pvt. Ltd. has filed the present appeal mainly on the following grounds.

Grounds of Appeal (gist)

Demand is not sustainable in absence of challenge of Bills of Entry

6. The appellant submitted an order of self-assessment is nonetheless an assessment order passed under the Customs Act, and obviously, it would be appealable by any person aggrieved thereby. Since Revenue has not preferred any appeal before Commissioner (Appeals) challenging the order of assessment of BoEs and after lapsing of time limit for filing of such appeal, the order of assessment of bill of entry has attained finality. Thus, order of assessment of Bill of Entry cannot be reopened by issuance of SCN under Section 28 of the Customs Act, 1962.

MEIS scrips have not been intentionally utilized for payment of cesses by the Appellant

7. The Impugned Order alleges that Appellant intentionally utilised MEIS scrips for payment of Cesses, which is in violation of Para 3.02 of the Foreign Trade Policy 2015-2020 ('FTP'). ICEGATE portal automatically debited the Cesses against MEIS scrip balance leaving no option with the Appellant to undo such automatic adjustments and pay the Cesses in cash. Therefore, Appellant is being compelled to do impossible i.e., to stop automatic debit of Cesses from MEIS scrip balance in the ICEGATE portal, which is controlled and managed by the Revenue.

No loss to the exchequer - Revenue Neutral situation

8. In the instant case, Cesses were paid from MEIS balance in lieu of cash on account of technical glitches in the ICEGATE portal. Even if it is assumed that there was no technical glitch, the entire transaction is revenue neutral.

CBIC circular directing concerned officer not to raise demand on the past transactions

9. Additionally, CBIC dealt with the issue wherein ICEGATE portal automatically debited the amount of Social Welfare Surcharge ('SWS') from the scrips balance in the portal vide Circular No. 02/2020-Customs dated 10.01.2020. In this regard, the CBIC directed the concerned officers not to disturb the past transaction wherein the amount was automatically debited in the ICEGATE portal. Basis the above, the Appellant submits that the aforesaid position shall equally apply to the case of the Appellant as well and the past transactions wherein MEIS scrips were automatically debited. From the above discussion, the appellant



submitted that impugned order has erred in confirming the demand of Cesses in direct contrast to the directions by CBIC circular and so, such demand of Cesses is liable to be set-aside.

Issue decided in Appellant's own case

10. Appellant further submitted that from the very same Customs Audit undertaken on the premises of the Appellant, a Show Cause Notices were issued for imports made from New Customs House, Delhi and ICD Tughlakabad. Vide an Order-in-Original dated 07.03.2023, the demand of Cess was dropped by the Principal Commissioner, New Customs House, Delhi. Copy of Order-in-Original No. 65/2022-23/Simmi Jain/Principal Commissioner dated 07.03.2023 enclosed by the appellant.

11. Thus, the appellant submitted that the issue is no longer res-integra and the impugned order is liable to be set-aside.

Impugned order confirming confiscation of the imported goods is not tenable

12. The Impugned Order has confirmed confiscation of imported goods under Section 111(m) and 111(o) of the Customs Act. As the BoEs were finally assessed, imported goods were cleared for home consumption, and hence are not available for confiscation. It is trite law that where the goods have already been cleared, an order for confiscation of goods is not sustainable.

13. Even otherwise, only "imported goods" can be confiscated under Section 111 of the Customs Act. Section 2(25) of the Customs Act defines "imported goods" means any goods brought into India from a place outside India but does not include goods which have been cleared for home consumption.

14. In the case of Bussa Overseas & Properties v. ACC, Bombay [2004 (163) ELT 304 (Bom.)], Bombay High Court held that once the goods are cleared for home consumption, they cease to be imported goods as defined in Section 2(25) of the Customs Act and consequently are not liable to confiscation under Section 111 of the Act. This case has been maintained by the Supreme Court reported at [2004 (163) ELT A160 (SC)].

15. The expression 'suppression of facts' has been analysed by the Apex Court in the following key judicial precedents:

- Padmini Products v. CCE, 1989 (43) ELT 195 (SC)
- Pushpam Pharmaceuticals Company v. CCE, 1995 (78) ELT 401 (SC)




- Anand Nishikawa Company Limited v. CCE, 2005 (188) ELT 149 (SC)
- Pahwa Chemicals Limited v. CCE, 2005 (189) ELT 257 (SC)

The following ratio emerges from the above quoted judicial precedents regarding invocation of extended period of limitation:

- The expression 'suppression of fact' does not mean any omission. The ingredients mentioned under the statutory provision postulate a positive act;
- The act must be deliberate to escape from payment of duty. It has to be proved on the basis of strong evidence that the assessee indeed tried to evade payment of duty; and
- Mere failure or negligence would not attract invocation of extended period limitation.

From the above, the expression 'suppression of facts' does not merely refer to a situation of non-provision of details; instead, the term refers to a positive wilful act to achieve a ploy. The resultant effect of ploy must be to escape the payment of customs duty with guile.

16. In the case of Tamil Nadu Housing Board v. CCE, 1994 (74) ELT 9 (SC), the Apex Court observed that intent to evade payment of duty is inherent in collusion and wilful misstatement of facts.

17. The appellant further contended that as duty is not recoverable, no interest is chargeable and no penalty is imposable.

In the **Additional Submissions** dated 07.08.2025, the appellant has mentioned as under:

FAVORABLE APPELLATE ORDER IN APPELLANT'S OWN CASE ON IDENTICAL ISSUE

18. Appellant respectfully submits that in respect of same issue and identical sets of facts, the Hon'ble Principal Commissioner of Customs, Air Cargo Complex (Import), New Delhi, has passed a favourable Order-in-Original No. 65/2022-23/Simmi Jain/Principal Commissioner bearing DIN 20230374NF0000722299 dated 07.03.2023, in Appellant's own case, whereby entire demand relating to impugned issue was dropped.

19. The Hon'ble Principal Commissioner of Customs (Delhi), after considering the facts and relevant documents, held that the demand raised was not sustainable and accordingly, set aside demand on impugned issue in entirety. Operative portion of Order passed by Principal Commissioner of Customs (Delhi) has been presented by the appellant for ready reference:

"14.4 In light of above, I hold that the Education Cess and Secondary and Higher Education Cess amounting to Rs. 24,18,566/- (Rs. 5,24,904/- + Rs. 18,93,662/-)

debited under MEIS/SEIS Scrips on imported goods vide Bills of Entry as mentioned in Show Cause Notices is not liable to be recovered in Cash. I accordingly set aside the demand of duty on this account."

20. Since the matter involved is identical and the Appellant has already obtained relief on same issue, the Appellant prayed that said Order passed by Principal Commissioner of Customs, New Delhi, be considered while deciding present appeal.

Admission of Appeal:

21. In the Appeal Memorandum filed with this office, the Date of communication of the impugned order dated 05.10.2023 has been shown as "13.10.2023". Whereas, the present appeal has been filed on 04.12.2023. Thus, the appeal has been filed within normal period of 60 days from the date of receipt of impugned order, as stipulated under Section 128(1) of the Customs Act, 1962. Further, the appellant has submitted a copy of the T.R.6 Challan No. 1722, Bank Sr.No. 10924 dated 22.02.2023 towards payment of entire Cess of Rs.6,192/- with Interest of Rs.4,732/-, totalling to Rs.10,924/-. As the appeal has been filed within time-limit and the requirement of pre-deposit as prescribed under Section 129E of the Customs Act, 1962 has been satisfied, it has been admitted and being taken up for disposal on merits.

Personal Hearing:

22. Opportunities for Personal Hearing through video conference were granted to the appellant on 07.05.2025, 17.06.2025 and 08.08.2025. Vide email dated 08.08.2025, the appellant has submitted that at the scheduled time for hearing, they experienced network issues due to which they could not join the hearing. The appellant sought another date of hearing. So, in order to follow the principles of natural justice, another Personal Hearing was fixed on 15.10.2025, which was attended by Shri. Ajay Kumar Pandey, Authorised Signatory of the appellant. He reiterated the written submissions made at the time of filing of appeal.

Findings:

23. I have carefully gone through the facts of the case and written as well as oral submissions made by or on behalf of the appellant M/s. Graziano Transmissioni India Pvt. Ltd. The issue, which is to be decided in the present appeal, is whether demand of 'Education Cess' and 'Secondary & Higher Education Cess' totally amounting to Rs.6,192/-, which was already debited in MEIS scrips, is sustainable by invoking extended period of limitation under the provisions of Section 28(4) of the Customs Act, 1962 or not.



24. One set of the appeal memorandum has been sent to the adjudicating authority vide this office letter F.No. S/49-374/CUS/AHD/2023-24/3512 dated 16.02.2024 for comments on this appeal. However, no reply thereof has been received. So, I proceed to decide the appeal on the basis of documents submitted by the appellant.

Findings regarding sustainability of demand in absence of challenge to assessment

25. The appellant has raised first contention to the effect that demand is not sustainable in absence of challenge to Bills of Entry. The issue arises for consideration is that whether demand of duty under Section 28 can be raised without filing of appeal by Customs Department against assessment of Bill of Entry. In my view, the answer is 'Yes'. In this regard, I rely upon the Judgment dated 20.02.2006 of Hon'ble Madras High Court in the case of **VENUS ENTERPRISES Vs. COMMISSIONER OF CUSTOMS, CHENNAI** reported as 2006 (199) E.L.T. 405 (Mad.). The first question of law involved in that case was as under:

"(1) Whether the Tribunal was right in holding that the order of assessment on which no Appeal was preferred, can be reopened by issue of a fresh Show Cause Notice under Section 28A of the Customs Act, in the light of the Apex Court's decision reported in 2004 (172) E.L.T. 145 (S.C.) in the case of Priya Blue Industries Ltd. v. CC ?"

The Hon'ble High Court has answered the said Question as under:

*"6. With regard to question No. 1, the law is well settled that a show cause notice under the provisions of Section 28 of the Act for payment of customs duties not levied or short-levied or erroneously refunded can be issued only subsequent to the clearance of the goods under Section 47 of the Act vide **Union of India v. Jain Shudh Vanaspati Ltd.** [1996 (86) E.L.T. 460 (S.C.)]. Therefore, as rightly held by the Tribunal, if the contention of the appellant's counsel that when the goods were already cleared, no demand notice can be issued under Section 28 of the Act is accepted, we will be rendering the words "where any duty has been short-levied" as found in Section 28(1) of the Act as unworkable and redundant, inasmuch as the jurisdiction of the authorities to issue notice under Section 28 of the Act with respect to the duty, which has been short-levied, would arise only in the case where the goods were already cleared. In view of the clear finding with regard to the mis-declaration and suppression of value, which led to the under-valuation and proposed short-levy of duty, we do not see any lack of jurisdiction on the part of the adjudicating authority to issue notice under Section 28(1) of the Act."*

26. Similarly, in the case of **GANESH INTERNATIONAL Vs. COMMISSIONER OF CUSTOMS, MUMBAI**, reported as 2012 (278) E.L.T. 72 (Tri.-Bom) [09-06-2011], the issue "(i)" before Hon'ble Tribunal was as under:



"(i) Whether, in respect of the imported goods which were assessed to duty under Section 17 of the Customs Act and cleared on payment of such duty under Section 47 of the Act, any amount of duty short-levied can be demanded subsequently under Section 28 of the Act without recourse to revision of assessment by the procedure laid down under Section 129D of the Act;"

On the above-mentioned issue, the CESTAT, Mumbai, has held as under:

"9.11 The issue in hand is squarely covered in favour of the Revenue by the Hon'ble Supreme Court's ruling in Jain Shudh Vanaspati case and the Hon'ble High Court's decision in Venus Enterprises case. Issue No. (i) thus stands answered in the affirmative in favour of the Revenue."

27. In view of the above-mentioned judicial pronouncements, I am of the view that demand of duty not paid or short-paid can be raised under Section 28 without reviewing assessment and filing appeal against Bill of Entry by Customs Department under the provisions of Section 129D of the Customs Act, 1962.

Findings on merits

28. As regards merits of the case, I find that Notification No. 24/2015-Cus dated 08.04.2015 (as amended) grants exemption from Basic Customs Duty and Additional Customs Duty when the goods were imported against a duty credit scrip issued by the Regional Authority under the MEIS scheme. So, payment of Education Cess and S&HE Cess could not be made through MEIS scrips. However, after going through submissions of the appellant and **Circular No. 2/2020-Customs dated 10.01.2020** issued by CBIC, it emerges that at the time of import, the Customs EDI System allow debit of Education Cess, S&HE Cess and Social Welfare Surcharge ('SWS') in MEIS scrips. So, it has been mentioned in the said Circular that Directorate General of Systems has been requested to make the relevant System level changes in this regard. It has been further mentioned in the said Circular as under:

"10. It is further noted that as per past practice, SWS is being allowed to be debited in the duty credit scrips along with Basic Customs Duty and Additional Duties of Customs. However, keeping in view the position explained hereinabove, it emerges that SWS cannot be debited through duty credit scrips and therefore has to be paid by the importer in cash. Directorate General of Systems has been requested to make the relevant System level changes in this regard.

11. With regard to the past cases of debits of SWS already made in duty credit scrips, it has been decided by the Board that for ensuring ease of doing business,



such past cases should not be disturbed and the payments made through debit in duty credit scrips may be accepted as revenue duly collected and recoveries in cash not be insisted for these cases."

In view of the above, it is clear that the CBIC has instructed to not disturb the past transactions in which Social Welfare Surcharge ('SWS') had already been debited in duty credit scrips; and recovery in cash should not be insisted in such past transactions. In this regard, the adjudicating authority has observed that the Circular No. 02/2020 dated 10.01.2020 accepts payments made by debiting from MEIS scrip for Social Welfare Surcharge (SWS) only and not for payment of Education Cess / Higher Education Cess. Therefore, he has confirmed the demand of Cess. I have gone through the said Circular. In the said Circular, there is clarification about Social Welfare Surcharge debited from MEIS scrips; however, there is no explicit clarification about Education Cess and S&HE Cess. In this regard, I am of the view that the Board's clarification should be read by its spirit. At the time of issuance of the said Circular, SWS was leviable, but Education Cess and S&HE were not leviable. With effect from 02.02.2018, Social Welfare Surcharge was leviable in place of Education Cess and S&HE Cess. Therefore, there should not be any reason to allow payment of SWS from MEIS scrips and not allow the payment of Education Cess and S&HE Cess for the period prior to issuance of Circular No. 02/2020-Cus dated 10.01.2020. In the present case, the imports were made during the period of February 2018 to November 2019 and therefore, payment of Education Cess and S&HE Cess automatically debited from MEIS scrips should be accepted.

29. Further, I find that on the basis of the same Premises Based Audit Report in respect of the same importer/appellant, following Show Cause Notices have been issued in respect of imports made through Air Cargo, New Delhi and ICD-Tughlakabad:

Sr. No.	Show Cause Notice No. & Date	Port	Demand in respect of wrong utilization of MEIS
1	97/2021-22 dated 02.09.2021	Air Cargo, New Delhi	Rs.5,24,904/-
2	VIII/ICD/TKD Gr-5/ Graziano Trans/2195/2021 dated 28.12.2021	ICD TKD	Rs.18,93,662/-

30. The above-mentioned two Show Cause Notices have been adjudicated by the Principal Commissioner of Customs (Import), Air Cargo Complex, New Delhi, vide Order-In-



Original No. 65/2022-23/Simmi Jain/Principal Commissioner dated 07.03.2023. Vide the said O.I.O., the Principal Commissioner has set aside the demand of Education Cess and S&HE Cess on the same issue and in respect of the same appellant.

31. The Principal Commissioner Customs (Import), Air Cargo Complex, New Delhi, has relied upon the Order dated 06.08.2021 of Hon'ble High Court of Madras in the case of **KTV HEALTH FOOD PVT. LTD. Versus COMMR. OF CUS. (PREVENTIVE), TIRUCHIRAPALLI [2022 (381) E.L.T. 66 (Mad.)]**. Gist of the same is as under:

"25. When that being the statutory declaration made by the Act of Parliament i.e., the Finance Act, 2004 and 2007, we cannot have any different view to state that there were different components. What is the duty to be imposed on the imported goods first be calculated and accordingly, 2% of education cess and 1% of secondary and higher education cess shall be levied and imposed. Hence, when the importer pay the duty, he shall also pay the cess which become part and parcel of the duty of customs. That is the reason why the total amount of Rs. 22,88,86,212/- were paid by the petitioner as duty of customs as well as education cess through the scrips of MEIS. Having accepted the same, though subsequently, in view of the notifications, if the Customs Department come forward to take a stand that the mode of payment of the education cess even though being part of the customs duty, shall not be on the same line by using the scrip, such kind of payment can be insisted upon, provided only in future cases and not in the cases where it has already been paid and where the goods have been cleared. This was exactly been made in execution by Circular No. 2/2020, dated 10-1-2020.

26. When such a circular was issued by the Customs Department and the same having been implemented in respect of various people like the petitioner, the benefit of the said circular cannot be denied to the petitioner on the alleged reason that, the education cess or the higher and secondary education cess being a different component cannot be treated as customs duty or additional customs duty and therefore, the benefit conferred under Clause 11 of the said circular cannot be made available to the petitioner. The said view taken by the respondent/Customs Department, in the considered opinion of this Court, in view of the aforeslated legal position, is untenable and unacceptable.

27. The quoting of the Hon'ble Supreme Court judgment in Unicorn Industries case is a wrong fitment of the citation, as the issue decided in the said case, in fact the principle enunciated in that case if it is culled out, certainly would support the case of the petitioner and not the respondent. Therefore, this Court has no hesitation to state that, the reasons stated in the impugned order rejecting to give the benefit under Circular No. 2/2020 is not supported by any legal basis. Therefore, the said reasons are unsustainable and therefore, based on such reason, since the rejection has been made through the impugned order, it is also equally unsustainable. Hence, it is liable to be interfered with.



28. In view of the aforesaid discussions, this Court is inclined to pass the following orders :

"The impugned order is hereby quashed. As a sequel, there shall be a direction to the respondent to give the benefit of Clause 11 of Circular No. 2/2020, dated 10-1-2020 to the petitioner."

In view of the above position of law, the Order of Hon'ble High Court of Madras in the case of KTV HEALTH FOOD PVT. LTD. (supra) is required to be followed. Further, I have no reason to take different view than the view taken by the Principal Commissioner Customs (Import), Air Cargo Complex, New Delhi, who has dropped the demand on similar issue in respect of imports made through Air Cargo, New Delhi and ICD-Tughlakabad by the same appellant as mentioned hereinabove.

Findings regarding invocation of extended period of limitation under Section 28(4)

32. I find that the extended period of limitation under the provisions of Section 28(4) has been invoked in this case on the ground that the importer was aware that debiting of Cesses through MEIS/SEIS Scrip was not correct, but with sole intention to evade payment of Customs duty/Cesses on account of suppression they have deliberately done so. Further, it has been alleged that the importer had never informed the Department that they had wrongfully paid the Cesses by debiting MEIS/SEIS scrips. I find that these allegations regarding invocation of extended period of limitation are not sustainable. As the Bills of Entry have been filed in Customs EDI System, the payment of Cesses through MEIS scrips must have been reflected in the EDI System and there is no provision under which the importer was required to separately inform the Customs Department about payment of Cesses through MEIS scrips. 'Out of Charge' order can only be given after payment of duty/cess, wherever applicable. So, at the time of 'Out of Charge', the Customs Department must be aware about payment of Cesses through MEIS scrips.

33. For issuing SCN under Section 28(4) of the Customs Act, 1962, there should be "collusion" or "wilful mis-statement" or "suppression facts" on part of the appellant. The present case is regarding merely wrong payment of Cesses through MEIS scrip. There is no allegation regarding collusion or mis-declaration of description, quantity, value and any other particulars of goods declared in the Bills of Entry. Under this situation, I am of the view that the case laws regarding limitation relied upon by the appellant are squarely applicable to the present case and therefore, extended period of 5 years for issuance of SCN under the provisions of Section 28(4) cannot be invoked in this case.



34. In the present case, the proper officer could have dis-allowed payment of Education Cess and S&HE Cess through MEIS scrips before clearance of goods by re-assessment under Section 17(4) of the Customs Act, 1962. If the re-assessment was not done due to any reason, the Customs Department could have issued a Show Cause Notice within normal period of limitation of two years under the provisions of Section 28(1) of the Customs Act, 1962. But, merely for the reason that the normal period of two years had been passed when the short-payment was detected, it is not proper to allege deliberate suppression of facts on part of the appellant just to cover the extended period of limitation.

35. On the issue of limitation, I rely upon the following Circular and Case laws:

- ***Circular No. 1053/2/2017 - CX, dated 10.03.2017 issued by the C.B.I.C. on the subject, "Master Circular on Show Cause Notice, Adjudication and Recovery - Regarding."*** (Para 3.1 to Para 3.6)
- ***Cosmic Dye chemical v. Collector of Cen. Excise, Bombay [1995 (75) E.L.T. 721 (S.C.)]***
- ***Pushpam Pharmaceuticals Company Vs. Collector of C.Ex., Bombay [1995 (78) ELT 401 (SC)]***
- ***Collector of Central Excise Vs. Chemphar Drugs & Liniments [1989 (40) ELT 276 (SC)].***
- ***Padmini Products Vs. Collector of C.Ex. [1989 (43) ELT 195 (SC)]***

36. I also rely upon Order of the jurisdictional CESTAT, Ahmedabad, in the case of ***Hindustan Unilever Ltd. Vs. Commissioner of Customs, Mundra [(2023) 12 Centax 171 (Tri-Ahmd)]***, wherein it has been observed and held as follows (underline supplied):

"4.4 We also find that no conduct or intent of the Appellant is found to be malafide as they submitted all the information and also the information required during assessment. Hence the demand raised for the period 26-11-2013 to 4-8-2015 covered under 106 Bill of Entry out of 886 are barred by limitation and considered to be assessed finally. The goods were not found to be different than declared and the value was based on transfer pricing and hence provisions of Section 111 (m) is also not applicable. The remaining BEs were cleared by the customs after verification and scrutiny of goods and import documents and hence the same also do not come under the purview of Section 111 (m)."



Against the above-mentioned Final Order in the case of **Hindustan Unilever Ltd.** (supra), the Commissioner of Customs, Mundra, had filed a Civil Appeal Diary No. 32747 of 2023. Vide Order 22.09.2023, reported as **Commissioner of Customs, Mundra Vs. Hindustan Unilever Ltd. [(2023) 12 Centax 172 (SC)]**, the Hon'ble Supreme Court has dismissed the said Civil Appeal by observing that they are not inclined to interfere with the judgment and order impugned in that appeal.

37. I also rely upon the Final Order No. 50027-50031 of 2023 dated 13.01.2023 in Appeal No. C/52239/2021 and others, passed by Hon'ble CESTAT, New Delhi, in the case of **Midas Fertchem Impex Pvt. Ltd. Vs. Principal Commissioner of Customs, ACC (Import), New Delhi**, which has been reported as **(2023) 4 Centax 73 (Tri.-Del)**. In the said case, it has been held that *any wrong classification or claim of an ineligible notification or wrong self-assessment of duty by an importer will not amount to mis-statement or suppression* (Para 50 of the Order refers).

38. In the present case there is no allegation that any of the information submitted by the appellant was false, fabricated or mis-leading. Therefore, I am of the considered view that the charge regarding suppression on part of the appellant is not sustainable and extended period of limitation under Section 28(4) of the Customs Act, 1962, is not invokable in the present case.

39. Further, I find that the Bills of Entry in this case have been filed during the month of **January-2018**; whereas, the Show Cause Notice has been issued on **30.12.2022**. Therefore, the entire demand has been issued beyond the normal period of limitation of two years, as prescribed under Section 28(1) and thus it is time-barred, as rightly contended by the importer.

40. In view of the above discussion, the demand of Education Cess and S&HE Cess raised by the impugned order is not sustainable on merits as well as limitation and so, it is required to be dropped. When demand of Education Cess and S&HE Cess itself is not sustainable, the order regarding levy of interest, imposition of penalties and redemption fine is also not sustainable.

41. In view of the above facts and findings, I am of the view that the impugned order passed by the adjudicating authority is required to be set aside. Accordingly, I pass the following order:



Order

I set aside the Order-In-Original No. 153/ADC/VM/O&A/2023-24 dated 05.10.2023 passed by the Additional Commissioner of Customs, Ahmedabad, and allow the appeal filed by M/s. Graziano Transmissioni India Pvt. Ltd. with consequential relief, if any, in accordance with law.




 (Amit Gupta)
 Commissioner (Appeals),
 Customs, Ahmedabad

F.No. S/49-374/CUS/AHD/2023-24

Date: 27.10.2025

By E-mail (As per Section 153(1)(c) of the Customs Act, 1962)

To
 M/s. Graziano Transmissioni India Pvt. Ltd.
 Plot No. 14, Udyog Kendra, Greater Noida,
 Uttar Pradesh – 201304.
 (email: ajay.pandey@dana.com)

Copy to:

1. The Chief Commissioner of Customs, Gujarat, Custom House, Ahmedabad.
 (email: ccohm-guj@nic.in)
2. The Principal Commissioner of Customs, Custom House, Ahmedabad.
 (email: cus-ahmd-guj@nic.in rra-customsahd@gov.in)
3. The Additional Commissioner of Customs, Custom House, Ahmedabad.
 (email: cus-ahmd-adj@gov.in)
4. The Deputy/Assistant Commissioner of Customs, ICD-Khodiyar.
 (email: icdkhd-ahd@gov.in)
5. Guard File.
